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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2006

Coram :

THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN
AND
THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

Tax Case No.47 of 2002

The Commissioner of Income Tax, TN-I
Chennai. ..Appellant

Vs

M/s.Best & Crompton Engineering Ltd.,
S.I.E.T. Towers,
Anna Salai,
Chennai-600 018. ..Respondent

Reference under Sections 256(1) of the Income Tax Act, 1961 by Income Tax Apellate Tribunal, "B" Bench, Chennai in R.A. No.744 (Mds)/1997 (I.T.A. 2158 (Mds.) 90) for the assessment year 1981-82 against reference G.I.No.7-B/81-82/47-004-CT-6861 dated 23.11.89/2.1.90 on the file of the Deputy Commissioner of Income Tax, Special Range-I, Madras-34 and against IT/Appeal No.96-89-90 dated 26.3.1990 on the file of the Commissioner of Income Tax (Appeals)-V, Madras-600 034.

For Appellant : Mrs.Pushya Sitaraman
standing Counsel for IT

For Respondent: No appearance

JUDGMENT

P.P.S.JANARTHANA RAJA J.

At the instance of the Revenue, the Income Tax Appellate Tribunal has referred the following question of law arising out of the order dated 11.09.1997 in I.T.A. No.2158/mds/90 for the opinion of this Court.

"Whether on facts and in the circumstances of the case, the Appellate Tribunal is right in law in holding that the assessee is entitled for relief under Section 91 of the Income Tax Act,

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1961 without taking into account the weighted deduction allowed u/s. 35B of the Income Tax Act, in respect of the Iranian income?"

2. The facts leading to the above question of law are as under:

The respondent assessee is a company in which public have substantially interested. The relevant assessment year is 1981-82. The corresponding accounting year ended on 31.3.1981. The respondent assessee is a resident company. The said resident company earned income in Iran for which there was no Double Taxation Avoidance Agreement. The respondent company earned income from Iran amounting to Rs.25,61,426/- on which tax of Rs.10,29,564/- was paid in Iran. In terms of Section 91 of the Income Tax Act, the respondent assessee claimed a double taxation relief which was allowed by the Assessing Officer by the Original Order dated 28.10.1987. Later, the Assessing Officer revised the assessment under Section 154 of the Act and passed an order on 02.01.1990 deducting the weighted deduction under Section 35B amounting to Rs.20,00,056/- from Iran income and worked out the double taxation relief on the sum of Rs.5,61,370/-

3. Aggrieved by the order, the respondent assessee filed an appeal to the Commissioner of Income Tax. The Commissioner of Income Tax (Appeal) held that the weighted deduction allowed under Section 35B should not be deducted from the Iranian income, while computing the relief for double taxation and further directed to recompute the double income tax relief on the foreign income of Rs.25,61,426/-

4. Aggrieved by the order of the first Appellate Authority, the Revenue filed an appeal to the Income Tax Appellate Tribunal. The Tribunal held that the order of the Commissioner of Income Tax (Appeal) was correct, relying on the decision of the Supreme Court in the case of K.V.A.L.M. Ramanathan Chettiar Vs. C.I.T., (88 ITR 169).

5. Aggrieved by the said order of the Tribunal, the Revenue filed the reference application before the Tribunal and the Tribunal has referred the aforesaid question for our opinion.

6. The learned counsel appearing for the Revenue submitted that the Assessing Officer was right in excluding the deduction allowed under Section 35B of the Income Tax Act, 1961 from the Iranian Income to arrive at the correct Iranian income, which had suffered tax both in Iran and India, for the purpose of relief under Section 91 and also relied on the Andhra Pradesh High Court Judgment reported in 210 ITR 287. Eventhough notice had been served on the respondent company in this Tax Case, there was no representation for the assessee.

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7. We have heard the counsel appearing for the revenue. The relevant provisions of law for our consideration is Section 91 of the Income Tax Act. Section 91 of the Income Tax deals with

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countries with which no agreement exists and it grants unilateral relief in cases where Section 90 does not apply, subject to the following conditions:

> "a) the assessee should be resident of India in the previous year;
> b) the income should have accrued in fact outside India and should not be deemed under any provision of this Act to accrue in India;
> c) the income should be taxed both in India and in a foreign country with which India has no agreement for relief against or avoidance of double taxation; and
> d) the assessee should have in fact paid the tax in such foreign country by deduction or otherwise."

The unilateral relief is granted only in respect of the "double tax income", which means that, that part of the income is actually included in the assessee's total income. The word "income" as it is understood for the purpose of Section 91 would be the income computed in the normal sense before adjustment of deduction under Section 35B. What is contemplated by the term or expression "income" in the said sections is not an exact quantum or measure of the income as computed either in India or abroad for the purpose of taxation in the respective countries, but the income as ordinarily understood in a commercial business sense. This is so, because the Indian Tax laws may not be identical to the laws obtaining in another country and the computation of income in either country would not result in the same quantum of income since each country has its own fiscal policies and tax structure and allowances. It is not in dispute that the income earned by the respondent assessee in Iran was of Rs.25,69,426/-. The said Section 91 speaks of the income which accrued or arose outside India. Hence, the income which accrued or arose outside India, Viz. in Iran was prior to the adjustments contemplated under Section 35B. It is on that income, the respondent assessee is entitled to the benefit of double income tax relief. The curtailment of the benefit in this regard by imputing the deduction under Section 35B to the income from Iran is clearly erroneous.

8. Reading of Section 91 with the decision of the Apex Court in the case of K.V.A.L.M. Ramanathan Chettiar Vs. C.I.T. (88 ITR 169), it is clear that the double taxation relief has to be worked out on the iranian income earned abroad, as above. The learned counsel for the Revenue relied on the Andhra Pradesh High Court judgment reported in 210 ITR 287 to support the argument. It was held in the judgment that the amount deducted under Chapter VI-A under Section 91 of the Income Tax Act, is not doubly taxed and therefore no relief is available in respect of such amount. In the present case, that part of the income Viz. Iranian income was actually included in the assessee's total income. Hence there was a "doubly taxed" income. When the income is doubly taxed, the assessee is entitled to the unilateral relief under Section 91 of the Income Tax Act. Hence, the Andhra Pradesh judgment will not help the Revenue in this case. In view of the same, the order of

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the authorities below are in conformity with law and requires no interference.

9. In such circumstance, the above question referred to us is answered in favour of the assessee and against the Revenue. The reference is answered accordingly.

km

Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1. The Assistant Registrar,
   Income Tax Appellate Tribunal,
   "B" Bench, Rajaji Bhavan, III Floor,
   Besant Nagar, Chennai(5 Copies)

2. The Commissioner of Income Tax,
   Appeals V, Chennai-34.

3. The Secretary,
   Central B and of Revenue N.Delhi(3 Copies)

4. The Deputy Commissioner of Income Tax,
   Special Range-I, Madras-34.

5. The Commissioner of Income Tax,
   TN-I, Chennai.

+1 CC to M/s.Pushya Sitaraman, Advocate, SR No.533

SSV(CO)
BG/12.1.2006

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